
(2020) 08 SHI CK 0295

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 346, 562 Of 2020

Prakash Chand And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 21-08-2020

Acts Referred:

Citation : (2020) 08 SHI CK 0295

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Kul Bhushan Khajuria, Vijay Kumar Arora, Ashok Sharma, Ranjan Sharma, Vikas Rathore, Vinod Thakur, Bhupinder Thakur, Seema Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Since both these petitions involve a common order of transfer dated 13.01.2020, the petitioner Prakash Chand has assailed the same as being illegal, arbitrary and contrary to all norms, whereas the petitioner Suresh Kumar Sharma in CWP No. 562 of 2020 has sought enforcement of the order, as

such, the same are taken up together for hearing and are being disposed of by a common judgment.

2. These cases reflect a sorry state of affairs where the transfer of a Government servant has been effected on the request of a former Minister, who unfortunately is no longer in the land of living.

3. It is more than settled that after demitting the office, public representatives be it the Chief Minister, Minister, M.P. or MLAs, is on a par with

common citizen, even though, by virtue of office held, he/she may be entitled to some protocols. The public office held by them becomes a matter of

history and, therefore, cannot form the basis of reasonable classification to categorise previous holders of public office as a special category of

persons entitled to the benefit of special privileges like making recommendation for transfer.

4. In coming to such conclusion, we draw the support from the judgment of the Honâ??ble Supreme Court in Lok Prahari through its General

Secretary vs. State of Uttar Pradesh and others (2018) 6 SCC 1.

5. The record reveals that the former Minister gave a list of five persons to be transferred. Before the recommendations could reach the

administrative department, the same were placed before the Honâ??ble Chief Minister, who approved the above recommendation of transfer as it is

without even consulting the administrative authority.

6. It is trite that even an elected representative can only propose the transfer of an employee, that too for genuine and cogent reasons and not by

usurping the authority of the administrative department, who then alone is competent to issue the orders of transfer after due application of mind.

Whereas, in the instant case, as stated above, the proposal itself was bad in law as it was initiated by a person who had no authority whatsoever to do

so. Therefore, any action drawn on such proposal is also bad in law.

7. Since the order dated 13.01.2020 is not sustainable, consequently, the petition filed by the petitioner Prakash Chand i.e. CWP No. 346 of 2020 is

allowed and that of CWP No. 562 of 2020 filed by the petitioner Suresh Kumar Sharma, is dismissed.

8. At this stage, it is represented by Mr. Vijay Kumar Arora, learned counsel for the petitioner in CWP No. 562 of 2020 that his client is having

personal difficulty that is why he had sought his transfer and now that the transfer has been cancelled, he may be permitted to make a representation.

The request appears to be innocuous and is allowed.

9. The petitioner in CWP No. 562 of 2020 will make a representation to the respondents/competent authority, which shall be decided within a period of

four weeks from the receipt thereof.

10. Both the petitions stand disposed of in the aforesaid terms, so also the pending application(s), if any.